

**PORT OF OLYMPIA COMMISSION**  
**Resolution 2006-3**

**Revised State Environmental Policy Act Policies and Procedures**

A RESOLUTION of the Port Commission of the Port of Olympia, Thurston County, Washington, revising and adopting the Port's policies and procedures under the State Environmental Policy Act and implementing rules, chapter 43.21C RCW and chapter 197-11 WAC.

WHEREAS, the State Environmental Policy Act (SEPA) sets forth an environmental policy for Washington state and requires that the environmental impacts of proposals be analyzed and, where appropriate, mitigated; and

WHEREAS, SEPA applies to state agencies, counties, and municipal and public corporations, including port districts; and

WHEREAS, SEPA has been amended to require the State Department of Ecology to issue new uniform statewide rules for carrying out SEPA; and

WHEREAS, the Port is required to adopt SEPA policies and procedures that are consistent with the new rules adopted by the Department of Ecology (WAC 197-11) and may adopt by reference any or all of these rules; and

WHEREAS, the Port has provided public notice and opportunity for public hearing on this resolution;

NOW, THEREFORE, BE IT RESOLVED, by the Port Commission of the Port of Olympia, Washington as follows:

The Port of Olympia adopts the following SEPA ENVIRONMENTAL CODE:

Sections:

1. Adoption of SEPA rules.
2. Authority.
3. Purpose, applicability, and intent.
4. Environmental policy.
5. Additional definitions.
6. Timing of the SEPA process.
7. Public Notice.
8. Appeals of SEPA threshold determination and adequacy of final environmental impact statement.
9. Flexible thresholds for categorical exemptions.
10. Emergencies.
11. Responsibility of the Port's SEPA public information center.

12. Critical areas.
13. Lead agency – Responsibilities.
14. Severability.
15. Repealer.

## **1. Adoption of SEPA rules.**

The Port of Olympia hereby adopts by reference the following sections or subsections of Chapter 197-11 of the Washington Administrative Code (SEPA Rules):

WAC

197-11-010 through 197-11-990.

## **2. Authority.**

The following regulations concerning environmental policies and procedures are hereby established and adopted pursuant to Washington State law, Chapter 109, Laws of 1971, Extraordinary Session (Chapter 43.21C RCW) as amended, entitled the “State Environmental Policy Act of 1971,” (SEPA), and Washington State Administrative Code regulations, Chapter 197-11, entitled “SEPA Rules.”

## **3. Purpose, applicability, and intent.**

(1) The purpose of this Resolution is to provide Port policies and regulations implementing the State Environmental Policy Act of 1971 (SEPA) which are consistent with the SEPA rules.

(2) This Resolution is applicable to all Port of Olympia departments/divisions, committees, and Port Commission.

(3) The intent of this Resolution is to govern compliance by all Port departments/divisions, committees, and Port Commission with the procedural requirements of the State Environmental Policy Act of 1971.

(4) This Resolution is not intended to govern compliance by the Port with respect to the National Environmental Policy Act of 1969 (NEPA). In those situations in which the Port is required by Federal law or regulations to perform some element of compliance with NEPA, such compliance will be governed by the applicable Federal statute and regulations and not by this Resolution.

## **4. Environmental policy.**

The environmental policies of the Port of Olympia are the policies set forth in the following documents and statutes: the Port's "comprehensive plan," including all of its elements, and Chapter 43.21C RCW.

## **5. Additional definitions.**

In addition to those definitions contained within WAC 197-11-700, the following terms shall have the following meanings, unless the context indicates otherwise:

- (1) "Department" means any division, or organizational unit of the Port.
- (2) "SEPA Rules" means WAC Chapter 197-11 adopted by the Department of Ecology.
- (3) "Early Notice" means the responsible official's response to an applicant stating whether he/she considers issuance of a determination of significance likely for the applicant's proposal.
- (4) "Responsible Official" means the Port's Executive Director or designee. The Responsible Official's duties may be delegated to appropriate staff persons, but Responsible Official shall approve and is responsible for the Determination of Environmental Significance and the adequacy of an Environmental Impact Statement.
- (5) "SEPA Public Information Center" means the Public Works Department.

## **6. Timing of the SEPA process.**

- (1) The SEPA process shall be integrated with Port activities at the earliest possible time to ensure that planning and decisions reflect environmental values, to avoid delays later in the process, and to seek to resolve potential problems.
- (2) The responsible official shall prepare the threshold determination and environmental impact statement (EIS), if required, at the earliest possible point in the planning and decision making process, when the principal features of a proposal and its environmental impacts can be reasonably identified.
  - (a) A proposal exists when the responsible official is presented with a project or has a goal and is actively preparing to make a decision on one or more alternative means of accomplishing that goal and the environmental effects can be meaningfully evaluated. The fact that proposals may require future Port approvals or environmental review shall not preclude current consideration, as long as proposed future activities are specific enough to allow some evaluation of their probable environmental impacts.
  - (b) The environmental process shall commence upon receipt by the responsible official of an environmental document. The responsible official may also organize environmental review in phases as specified in WAC 197-11-060(5).

(c) Appropriate consideration of environmental information shall be completed before the responsible official commits to a particular course of action (WAC 197-11-070).

## **7. Public notice.**

(1) When notice is required under Section 9.3, WAC 197-11-502(4)(b) and 197-11-360(3), the responsible official must use reasonable methods to inform the public and other agencies that an environmental document is being prepared or is available and that public hearing(s), if any, will be held.

(2) Notice Requirements.

(a) Notice of the SEPA threshold environmental determination shall be published in a newspaper of general circulation within the area in which the project is located and sent to the Port of Olympia Commission mailing list. The notice shall inform recipients where the SEPA records are located.

(b) If an appeal is filed pursuant to subsection 2.a of this section, notification of hearing such appeal shall be mailed to parties of record and to all parties who have in writing to the Public Works Department indicated an interest in the proposed land use action.

(c) Notice of determination of significance, scoping, and availability of draft and final EISs shall be published in a newspaper of general circulation within the area in which the project is located and sent to the Port of Olympia Commission mailing list. Parties who comment on the project shall receive notice of the draft and final EISs.

## **8. Appeals of SEPA threshold determination and adequacy of final environmental impact statement.**

(1) Request for Reconsideration. Any challenge to a SEPA threshold determination and adequacy of final environmental impact statement shall be initiated by filing a Request for Reconsideration with the Responsible Official no later than close of business seven (7) days following the end of the fourteen (14) day comment period for the SEPA determination. The Request for Reconsideration is a mandatory condition precedent to filing an administrative appeal.

If the Request for Reconsideration is denied, an appeal must be filed no later than close of business seven (7) days from the date the Reconsideration decision issues. If the Request for Reconsideration is granted, no additional reconsideration required or allowed. An appeal must be filed no later than 7 days from the date the Reconsideration decision issues.

(2) Commission, Hearing Examiner Appeal. If an appeal is filed after the Request for Reconsideration process is complete, the Commission, at its discretion, may:

- (a) elect to hear the appeal, and after a public hearing, issue a Final Decision;
- (b) forward the appeal to the Hearing Examiner, who would hold a public hearing and issue a Final Decision; or
- (c) decline to hear the appeal and adopt the Decision of the Responsible Official as the Port's Final Decision.

A Final Decision rendered under any of the above three processes is appealable to Superior Court within 21 days of the date the Final Decision issues. Only the parties to the appeal have standing to appeal to Court.

(3) Appeal Procedures.

(a) Appeal Procedure/Fee. A notice of appeal, together with a filing fee as set forth in the Port of Olympia Proprietary Type-User Charges for Port Goods and Services Fee Resolution shall be filed with the Public Works Department. The

Public Works Department shall process the appeal in accordance with the procedures set forth in this Resolution.

(b) Time Requirement. A Request for Reconsideration and an appeal shall be filed within the time frames set forth in Section 8(1) herein. If the last day for filing an appeal falls on a weekend day or holiday, the last day for filing shall be the next Port working day.

(c) Content of the Reconsideration and Appeal. Requests for Reconsideration and Appeals shall contain:

- (i) The name and mailing address of the Requestor/appellant and the name and address of his/her representative, if any;
- (ii) The requestor's/appellant's legal residence or principal place of business;
- (iii) A copy of the decision which is appealed;
- (iv) The grounds upon which the requestor/appellant relies;
- (v) A concise statement of the factual and legal reasons for the appeal;
- (vi) The specific nature and intent of the relief sought;
- (vii) A statement that the requestor/ appellant has read the appeal and believes the contents to be true, followed by his/her signature and the signature of his/her representative, if any. If the requestor/appealing party is unavailable to sign, it may be signed by his/her representative, and
- (v) the appropriate fee.

(d) Effect of Request for Reconsideration and Appeal. The filing of a Request for Reconsideration and a valid appeal of a threshold determination or adequacy of a final environmental impact statement (FEIS) shall stay the effect of such determination or adequacy of the FEIS and no major action in regard to a proposal may be taken during the pendency of a Request for Reconsideration and or an appeal and until a Final Decision is issued on the appeal. A decision to reverse the determination of the responsible official shall further stay any decision, proceedings, or actions in regard to the proposal.

(e) Withdrawal of Request for Reconsideration and or Appeal. A request for Reconsideration and or an appeal may be withdrawn, only by the requestor and or appellant, by written statement filed with the Public Works Department. The Public Works Department shall inform the responsible official of the withdrawal request. If the withdrawal is requested before the response of the responsible official, or before serving notice of the Request/appeal, the appeal shall be dismissed with prejudice by the Port Commission, and the filing fee shall be refunded.

#### (4) Public Hearing.

(a) The public hearing on an appeal either by the Hearing Examiner or Port Commission, of the responsible official's Final Decision shall be expeditiously scheduled upon receipt of a valid appeal.

The public hearing shall be conducted in accordance with the procedures described herein.

(b) Any written materials or exhibits an appellant wishes to be considered at the public hearing shall be delivered to the Port offices during normal working hours not less than seven (7) business days prior to the public hearing. Testimony shall be limited to appellants and the Port Representative only.

(c) The Port response to an appeal must be provided to presiding entity (either the Hearing Examiner or the Port Commission), and appellant, not less than five (5) business days prior to the public hearing.

(d) Standards of Review. The Hearing Examiner or Commission may affirm the decision of the responsible official or the adequacy of the environmental impact statement, or

remand the case for further information; or may reverse the decision if the administrative findings, inferences, conclusions, or decisions are:

- (i) In violation of constitutional provisions as applied; or
- (ii) The decision is outside the statutory authority or jurisdiction of the Port; or
- (iii) The responsible official has engaged in unlawful procedure or decision-making process, or has failed to follow a prescribed procedure; or
- (iv) In regard to challenges to the appropriateness of the issuance of a DNS clearly erroneous in view of the public policy of the Act (SEPA); or
- (v) In regard to challenges to the adequacy of an EIS shown to be inadequate employing the “rule of reason.”

(e) Evidence – Burden of Proof. In each particular proceeding, the Requestor/ appellant shall have the burden of proof, and the determination of the responsible official shall be presumed prima facie correct and shall be afforded substantial weight. Appeals shall be limited to the record before the Responsible Official, except as specifically provided herein.

(f) Continuation of Hearing.

(i) Cause. A hearing may be continued by the presiding entity (either the Hearing Examiner or the Port Commission), for the purpose of obtaining specific pertinent information relating to the project which was unavailable at the time of the original hearing.

(ii) Notification. The presiding entity (either the Hearing Examiner or the Port Commission), shall announce the time and place of a continued hearing at the time of the initial hearing or by written notice to all parties of record.

(g) Conduct of proceedings. All hearings shall be conducted in an orderly manner. The presiding entity (either the Hearing Examiner or the Port Commission), shall have the authority to rule on all procedural matters, objections and motions.

(5) Appeal of Port Final Decisions. Port environmental Final Decisions shall be appealable to the Superior Court for the State of Washington. Any court action to set aside, enjoin, review or otherwise challenge the decision of the Port shall be commenced within 21 days of the entering of the decision by the Port unless otherwise provided by statute.

## **9. Flexible thresholds for categorical exemptions.**

The Port of Olympia establishes the following exempt levels for minor new construction as allowed under WAC 197-11-800(1)(c), except when undertaken wholly or partly on lands covered by water or in critical areas.

- (1) The construction or location of any residential structure of four or less dwelling units;
- (2) The construction of an office, school, commercial, recreational, service, or storage building with 12,000 square feet or less of gross floor area, and with associated parking facilities designed for 20 automobiles;
- (3) The demolition of an office, school, commercial, recreational, service, or storage building with 12,000 square feet or less of gross floor area;
- (4) The construction of a parking lot designed for no more than 20 automobiles;
- (5) Any landfill or excavation of 500 cubic yards or less throughout the total lifetime of the fill or excavation; and any fill or excavation classified as a class I, II, or III forest practice under RCW 76.09.050 or regulations thereunder.

## **10. Emergencies.**

Actions which must be undertaken immediately, or within a time too short to allow full compliance with this Resolution, to avoid an imminent threat to public health and safety, to prevent an imminent danger to public or private property, or to prevent an imminent threat of serious environmental degradation, shall be exempt from the procedural requirements of this Resolution. The responsible official shall determine on a case-by-case basis emergency actions which satisfy the general requirements of this section.

## **11. Responsibility of the Port's SEPA public information center (SEPA PIC).**

- (1) The SEPA PIC shall maintain a DNS register.
- (2) The SEPA PIC shall maintain an EIS register including for each proposal the location, a brief description of the nature of the proposal, the date first listed on the register, and a contact person or office from which further information may be obtained.
- (3) The documents are required to be maintained at the information center for seven years, and shall be available for public inspection, and copies thereof shall be provided upon request. The Port may charge for copies in the manner provided by Chapter 42.17

RCW (Public Disclosure and Public Records Law) and for the cost of mailing, consistent with adopted Port fees for such service. It shall be the responsibility of the responsible official for responding to requests received from other local, regional, State, or Federal agencies requesting consultation and comment from a specific Port department/division.

(4) The SEPA Public Information Center shall maintain a listing of recommended Federal, State, regional, local and private agencies/organizations and their addresses for use by the Port's responsible officials in making scoping requests and circulating draft EISs.

## **12. Critical areas.**

The Port may, at its option, designate areas within its jurisdiction which are environmentally sensitive areas pursuant to WAC 197-11-908. Fish and wildlife habitat conservation areas, erosion hazard areas, landslide hazard areas, steep slopes, wetlands and streams hereby designated critical areas. The scope of environmental review of actions within these areas shall be limited to:

- (a) Documenting whether the proposal is consistent with the requirements of applicable critical areas ordinances; and
- (b) Evaluating potentially significant impacts on the critical area resources not adequately addressed by GMA planning documents and development regulations, if any, including any additional mitigation measures needed to protect the critical areas in order to achieve consistency with SEPA and other applicable environmental review laws.

## **13. Lead agency – Responsibilities.**

The Port when acting in the capacity of the lead agency shall be the only agency responsible for complying with the threshold determination procedures of WAC 197-11-300 through 197-11-390 as adopted by reference and Sections 8 through 10 of this Resolution; and the responsible official of the Port shall be responsible for the supervision, or actual preparation, of draft EISs pursuant to WAC 197-11-400 through 197-11-455 as adopted by reference, including Sections 12 through 15 of this Resolution, including the circulation of such statements and the conduct of any public hearings required by this Resolution. The responsible official shall also prepare or supervise preparation of any required final EIS pursuant to WAC 197-11-360 through 197-11-640 as adopted by reference and Sections 12 through 18 of this Resolution.

## **14. Severability.**

If any provision of this Resolution or its application to any person or circumstance is held invalid, the remainder of this Resolution or the application of the provision to other persons or circumstances shall not be affected.

**15. Repealer.**

All prior Port resolutions dealing with compliance to the State Environmental Policy Act and particularly WAC 197-11 be and the same are hereby repealed by the adoption of this resolution.

Adopted by the Port of Olympia Commission on February 27, 2006.

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President

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Vice-President

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Secretary-Treasurer